

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1491

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-1491

UNITED STATES OF AMERICA,

Appellee

vs.

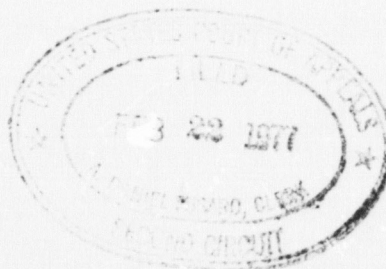
FRANK AMENDOLA,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANT'S APPENDIX

ROGER J. FRECHETTE
215 Church Street
New Haven, Connecticut 06510



PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE ZAMPANO

THE UNITED STATES

VS.

DANIEL VALERIANO

CHARLES FURMAN con 7/12/76

sent, 7/12/76 CATHERINE BROWN cop 5/10/76

a/k/a Catherine Jones

CLIFTON ADAMS cop 7/12/76

ELLSWORTH BELL cop 7/12/76

FRANK KINSLER cop 7/12/76

FRANK AMENDOLA

a/k/a "Alfie"

KINSLER: Thomas D. Clifford (apptd)

799 Main Street

Hartford, Conn.

BROWN: Thompson, Weir & Barclay

205 Church Street

New Haven, Conn.

BELL: Gerald P. Dwyer

246 Church Street

New Haven, Connecticut

BROWN: Andrew B. Bowman (appt 7/12/76)

770 Chapel Street

New Haven, Conn.

For U.S.:

Stewart H. Jones, U.S. Atty.

Paul E. Coffey, Spec. Atty.

450 Main Street

Hartford, Conn.

Peter Casey

For Defendant:

VALERIANO: Anthony J. Lasala, Esq.

33 Whitney Avenue

New Haven, Conn.

ADAMS: Withdrawn

Robert H. Boynton (appt)

121 Whitney Ave.

New Haven, Conn.

AMENDOLA: Roger J. Frechette

215 Church Street

New Haven, Conn.

FURMAN: Gitlitz, Ronai & Berchem
81 Broad Street
Milford, Conn.

ADAMS: W. Paul Flynn (Appt.)
132 Temple Street
New Haven, Conn.

PROCEEDINGS

1974

5/3 - The Grand Jury at Hartford returned a True Bill of Indictment charging violation of Title 18, U.S.C. 1955 and 2 of 371.

5/3 - Bench Warrant issued in duplicate for each defendant and together with certified copy of the Indictment handed to U.S. Marshal in Hartford for service.

5/16 - Magistrate's papers, filed: Record of proceedings.

5/22 - Motion to Unseal, filed by the government.

6/10 - AMENDOLA: PLEA: Plea of not guilty entered to Counts 1 and 2. Three weeks for filing motions after unsealing of tapes. Zampano, J. m-6/10/74.

6/21 - Following endorsement on Government's Motion to Unseal all papers currently under seal, and that all stenographic notes currently under seal be transcribed and filed with the Clerk of the Court: Motion granted. Zampano, J. m-6/21/74. Copies mailed to counsel.

7/1 - Notice of Readiness for trial, filed by the Government.

7/30 - Court Reporter's Transcript of proceedings held in camera in Chambers of Hon. Thomas F. Murphy on May 22, 1973, prior to filing of the Indictment, filed. Beecher, R.

8/9 - Discovery and Inspection: Identification of Speakers, filed by the Government.

9/5 - AMENDOLA: Motion to Suppress, filed by defendant.

9/5 - AMENDOLA: Motion to Dismiss Count Two, filed by defendant.

9/5 - AMENDOLA: Motion to Dismiss, filed by defendant.

9/9 - AMENDOLA: Motion for Bill of Particulars, filed by defendant.

9/17 - Sound Recording of proceedings held on 6/10/74 (Pleas), filed. Russell, R. See Commissioner's papers (T-1524), for Grand Jury proceedings re Valeriano, et al.

10/11 - AMENDOLA: Supplemental Brief re Motion to Dismiss, filed by defendant.

11/5 - Response of the Government to Defendant's Motions to Suppress, filed.

11/5 - Response of Government to Defendants' Motion to Dismiss Count Two of the Indictment, filed.

11/5 - Response of Government to Defendants' Motion to Inspect Grand Jury Minutes, filed.

11/5 - Response of Government to Defendants' Motion for a Bill of Particulars, filed.

11/18 - Hearing held on defendant's motions to suppress. Decision reserved.

11/22 - Continued hearing on Pending Motions to Dismiss from Nov. 18, 1974. Decision reserved. All discovery has been completed. Zampano, J. m-11/25/74

1976

Memorandum of Decision, filed and entered: All motions to dismiss are denied, All Motions to Suppress are denied, The Motions for disclosure of Grand Jury Minutes are denied, All Motions for Discovery and Inspection are denied. The motions for bills of Particulars are denied, with the exceptions noted hereinbefore. Zampano, J. m-2/18/76 copies mailed to counsel of record.

3/9 - Supplemental Response of the United States to Defendants' Motion for a Bill of Particulars, filed by govt.

7/13 - AMENDOLA AND VALERIANO: JURY TRIAL COMMENCES: 10:30 A.M. 74 jurors present. Oath on Voir Dire administered, 25 jurors excused for cause. Govt. allowed six challenges, defts. allowed 20 challenges. 12 jurors and 2 alternates impanelled and sworn. 12:15 Remaining jurors excused subject to call. 12:25 P.M. Jurors in this case excused until 7/20/76 at 10:30 A.M. Deft. Amendola's Interrogatories for Veniremen and Govt's Proposed Examination of Prospective Jurors and Govt's Request to Charge, filed. 12:27 Court adjourned. Zampano, J. m-7/14/76.

7/20 - AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 2:10 P.M., 2:12 P.M. 13 jurors present. Juror #1, Robert Arthur is absent, Alt. Juror #1 Mrs. Heap will take his place on jury panel. One Govt. witness sworn and testified. Govt. Exs. 1 thru 8, filed. Deft. Amendola's oral motion to strike exhibits, denied. 4:52 P.M. Court adjourned until 10:30 A.M. of 7/21/76. Zampano, J. m-7/21/76.

7/22 - AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 10:47 A.M. 10:49 A.M. 13 Jurors present. One Govt. witness sworn and testified. Govt. Ex. 55, filed. Govt. witness Connolly previously sworn resumes stand. Govt. Exs. 27 thru 37 made full exs. In the absence of the jury Court hears Motion to Dismiss and Motion to Suppress - motions denied for reasons stated in open Court. Govt. Exs. 39-41 made full exs. Copies of transcript distributed to jurors. Ex. 37 is played to the jurors. 3:32 P.M. Jury excused until 10:30 A.M. of 7/23/76. 3:33 P.M. Court adjourned. Zampano, J. m-7/23/76.

7/23 - AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 10:38 A.M. Motion to Reconsider Deft's Motion Treated as Motion to Strike Testimony and Suppress Evidence, filed by deft. Amendola. Court hears argument of the Motion. Motion to Reconsider is granted but the remaining motion are denied. 10:51 A.M. 13 jurors present. Govt. witness Connolly returns to the stand and narrates the tapes. Govt. Exs. 36, 39, 33 and 34 played for the jury. Motion to Strike Ex. 33 heard at side bar denied w/o prejudice. Deft. Ex. A marked for ID. 3:35 P.M. Jury excused until Tues. 9:30 A.M. 3:35 P.M. Court adjourned. Zampano, J. m-7/26/76.

7/27 - AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: Pen Register Brief, filed by deft. Amendola. Motion to Suppress Evidence &

Dismiss Case Against Amendola, filed. Motion denied for reasons stated in open court. 13 jurors present. Govt. witness Connolly resumes stand. 4:30 Court adjourned to 7/28/76 at 10:30 A.M. Zampano, J. m-7/28/76.

7/28 - AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: Deft. Amendola's Request to Charge, filed. 13 jurors present. Witness Connolly resumes stand. 3 Govt. witnesses sworn and testified. Deft. Ex. B & C, marked for Id. Govt. Ex. 56, filed. Govt. Ex. 57 thru 63, marked for Id. Deft. Valeriano's Response to Govt. Request, filed. Court hears counsel on Requests to Charge. 4:40 Court adjourned to 7/29/76 at 10:30 A.M. Zampano, J. m-7/29/76.

7/29 - AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: At request of Juror #3, Mr. Kent, chambers conference held. Court hears counsel on requests to charge. 13 jurors present. Govt. witness Cross resumes stand. Govt. Ex. #57 thru 63 made full exhibits. By agreement of counsel, Juror Mr. Kent will be excused on Tuesday (8/3/76) if 12 other jurors are present. 3:55 P.M. Court adjourned to 7/30/76 at 10:30 A.M. Zampano, J. m-7/30/76.

7/30 - AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 11:30 A.M. Govt. rests in absence of jury. Defendants move for judgment of acquittal - denied. Deft. Amendola's motion to strike testimony of Agent Connolly - denied. 13 jurors present. 12:03 P.M. Govt. rests in presence of jury. One witness for deft. Valeriano sworn and testified. 12:22 P.M. Both defendants rest. Defendants' renewed motions - denied. 12:30 P.M. Court adjourned to 8/3/76 at 9:30 A.M. Zampano, J. m-7/30/76.

8/3 - Jury Trial Continues 9:45 to 9:59 A.M. Govt. opens. 9:59 A.M. to 10:22 A.M. Deft. Valeriano closes. 10:22 to 10:48 A.M. Deft. Amendola closes. 10:48 to 10:56 A.M. Govt. rebuttal. 11:37 to 12:35 P.M. Court charges the jury. 12:35 P.M. Jury retires to jury room. Deft. Amendola takes exception to the charge, no further charge to be given.

8/3 - cont'd. 12:49 P.M. By agreement of counsel all full exs. and Indictment delivered to jury by Marshal and deliberation begin. 2:10 P.M. Note from jury requestion tape recorders. 2:23 P.M. Jury returns to jury room with tape recorders brought to the mby Marshal. Court Exs. one and two marked for ID.

4:35 P.M. Note from jury re: hung jury on one deft. Both deft's move to discharge jury, denied. 4:38 P.M. Jury returns verdict as to deft. VALERIANO: Guilty as charged. 4:43 P.M. Jury returns to jury room to continue deliberation as to Amendola. 5:50 P.M. Jury excused until 9:30 A.M. of 8/4/76. 5:52 P.M. Court adjourned. Zampano, J. m-8/4/76.

8/4 - JURY TRIAL CONTINUED: 9:15 A.M. Exhibits and recorders brought to jury room by Clerk. 9:30 A.M. 12 jurors continue deliberations. 10:43 A.M. Note from jury request headphones. Deft. Amendola moves for mistrial - denied. 10:45 A.M. Jurors return to Courtroom and hand Court second note re: hung jury. 10:48 Jury retires to jury room Deft. Amendola renews motion for mistrial, motion is granted. 11:00 A.M. Jury returns to Courtroom. Court advises jury of mistrial. 11:05 A.M. Jury excused subject to call. Court exs. 4 & 5 marked for ID. 11:07 A.M. Court adjourned. 11:15 A.M. In chambers: oral motion of govt for return of exs. granted w/o objection. 2:10 P.M. All govt. exs. given to F.B.I. and receipt acknowledged. Zampano, J. m-8/4/76.

8/6 - AMENDOLA: Notice of Readiness, filed by govt.

9/14 - AMENDOLA: On RCZ's Jury Assignment List: Ready #4. Jury will not be picked today. Zampano, J. m-9/15/76.

10/6 - Motion to Dismiss, filed by the deft. (AMENDOLA)

10/19 - Hearing held on Deft's Motion to Dismiss. Brief in Support of Motion to Dismiss, filed. Decision reserved. Zampano, J. m-10/19/76.

10/21 - Court Reporter's Transcript of Proceedings (JAL) held on 9/14/76, filed, Gale, J.

10/20 - AMENDOLA: 2ND JURY TRIAL COMMENCES: Court hears counsel on the pending Motion to Dismiss. Brief re: Didier, filed by deft. Motion to Dismiss is denied for all the reasons stated in open Court. Govt's proposed Examination of Prospective Jurors, filed. Motion to Dismiss on the grounds of double jeopardy, filed by deft. and denied. Deft. moves to strike those jurors who were on the previous jury panel - decision reserved until the voir dire is conducted. Case is declared on trial by the

Court. 12:15 P.M. 36 jurors present. 4 jurors on previous jury are excused. Court rules at side bar that it will continue the case until Nov. 3, 1976. The sixteen jurors who are not familiar with the case are to return on Nov. 3, 1976 with 35 additional jurors to be called by the Clerk for jury selection on that date. The remaining jurors excused subject to call. 12:45 P.M. Court adjourned until 11/3/76. Zampano, J. m-10/21/76.

10/22 - AMENDOLA: Notices of Appeal (2), filed. Certified copies of docket entries and Notices of Appeal mailed to Clerk, U.S.C.A., Copy of Notice of Appeal mailed to Peter R. Casey and Roger J. Frechette.

10/26 - AMENDOLA: Response to the U. S. to Motion to Dismiss, filed.

10/27 - AMENDOLA: Motion to Stay Trial, filed by deft.

10/27 - Court Reporter's Sound Recording of Proceedings (DISP and Jury Trial) held on Oct. 20, 1976, filed. Gale, R.

11/1 - AMENDOLA: Motion to Stay Trial endorsed: Denied. Zampano, J. m-11/2/76. copies

11/2 - Court Reporter's Transcript of Proceedings (Motion) held on Oct. 19, 1976, filed. Russell, R.

11/4 - AMENDOLA: Jury trial commences: 39 Jurors present. 12 jurors and 2 alternates impanelled. Two Government witnesses sworn and testified. Government Exhibit 1-18, filed. Government Exhibit 19 thru 26 a-c, marked for identification. Defendant Exhibit A, marked for identification. Court Adjourned at 4:30 P.M. to 11/5/76. Newman, J. M-11/5/76.

11/5 - AMENDOLA: Jury Trial Continued: 12 jurors and two alternates present. Three witnesses sworn and testified on behalf of Government; Government's exhibits 27a, 27b, 27c, 29, 30 & 31 marked for identification; Exhibits 19, 20, 21a,b,c; 22a,b,c; 23a,b,c; 24a,b,c; 25a,b,c and 26a,b,c; 27a-c; 28; 32; 33 & 34 filed; Exhibit 26b played to jury; Brief re: Voice identification filed by def't.; Court over rules defendant's

objections; at side bar, def't states objections as to testimony to be brought in - Court overrules objections; By argument of Court and counsel, Gov't exhibits 8 thru 18 are removed by the Gov't for the weekend; Gov't exhibit 28 is in the vault room #215; Court adjourned in this case to Nov. 10 at 10:30 A.M. Newman, J. M-11/8/76.

11/10 - Court reporter's transcript of proceedings held before Zampano, J. on October 20, 1976 filed. Gale. R.

11/9 - Record on Appeal sent U.S. Court. of Appeals. Appeal of Frank Amendola from Order Denying Motion to Dismiss. Copies of Index sent counsel.

11/11 - JURY TRIAL CONTINUES: 12 jurors and 2 alternates present. Govt. witness Connolly resumes stand. Govt. Ex. 31 played to the jury. Voice exemplar of Amendola played to the jury. One govt. witness sworn and testified.* Deft's Oral motion to Strike Testimony - denied. Deft.'s Motion to Strike exs. 1 thru 4 - granted as to Ex. 4. Deft's Motion to Strike tapes - denied. Deft. Motion for Judgment of Acquittal denied. 3:52 Deft. Rests. *3:33 P.M. Govt. rests. 3:53 P. M. Jury excused until 10:00 A.M. of 11/12/76. Deft's request to charge. filed. Court hears counsel on request to charge. 4:05 P.M. Court adjourned until 10:00 A.M. of 11/12/76. Govt. Ex. 4 returned and receipt received. Zampano, J. m-11/12/76.

11/12 - JURY TRIAL CONTINUES: 10:34 A.M. Court advises counsel of proposed rulings on request to charge. 10:37 A.M. 14 jurors present. Govt. opens 10:39 to 10:58 A.M. Deft. 10:58 to 11:44 A.M. Govt. closes 11:44 to 11:56 A.M. Court charges jury 12:10 to 1:00 P.M. Alt. jurors excused. Both sides take exception to the charge. Indictment and all full exhibits taken to the jury room and deliberations begin. 2:13 Court questions counsel as to the charge. 2:18 Jury enters Courtroom and Court corrects charge. 2:35 P.M. Jury returns verdict of guilty as to Cts one and two. Verdict accepted and ordered recorded. 2:39 P.M. Jury excused. Deft. released on same bond of own recognizance. Govt. given leave to file motion on bond at any time. Sentencing to take place at earliest time convenient to the Probation Office. Zampano, J. m-11/15/76.

12/13 - AMENDOLA: DISPOSITION. Impr. one year on Ct. one. Impr. one year on ct. two. The sentence on ct. two is suspended and the deft. is placed on probation for a period of three years.

The sentence on Ct. two is to run consecutive to the sentence on Ct. one. Deft. advised of his right to appeal. Deft. released on same bond pending appeal. Zampano, J. m-12/14/76.

12/17 - AMENDOLA: Judgment and Commitment, filed and entered. Zampano, J. m-12/17/76. Two cert. copies handed to U.S. Marshal for service.

12/17 - AMENDOLA: Notice of Appeal, filed by deft.

OFFICE OF THE FEDERAL PUBLIC DEFENDER
 DISTRICT OF CONNECTICUT
 770 CHAPEL STREET
 NEW HAVEN, 06510

July 10, 1974

Clerk, United States District Court
 District of Connecticut
 Post Office Building
 New Haven, Connecticut

Re: United States v. Valeriano, et al, Crim. No. H-74-48

Dear Sir:

This letter is to serve as a memorandum of discovery in the above-entitled matter under the Standing Order of this Court. The conference for discovery was held on July 3, 1974 at New Haven. Each defendant was represented and Mr. Coffey appeared for the government.

Production was made of the following documents:

1. Application for Wiretap Order	1/15/73
2. Authorization of Attorney General	1/11/73
3. Letter Forwarding Authorization	1/11/73
4. Connolly Affidavit	1/15/73
5. Order Authorizing Tap	1/15/73
6. Connolly Progress Report	1/13/73
7. Connolly Progress Report	1/29/73
8. Return of Tapes by Connolly	1/29/73
9. Transcript of In Chambers Return	1/29/73
10. Sealing Order of J. Clarke	1/29/73
11. Order of J. Murphy	1/31/73
12. AO Receipt of J. Murphy's Report	2/28/73
13. Coffey Letter to J. Murphy	2/12/73
14. Application for Pen Register	5/22/73
15. Connolly Affidavit re Pen Register	5/22/73
16. Order Authorizing Pen Register	5/22/73
17. Connolly Report on Pen Register	6/6/73
18. Connolly Affidavit for Search Warrant	7/16/73
19. Indictment	
20. Motion to Unseal	5/21/73

Clerk, United States District Court
 July 10, 1974
 Page 2.

21. Inventory and Order of Service	7/10/73
22. Memorandum of Decision (J. Newman)	11/28/73
23. FBI (204) Report of Connolly	5/9/73
24. FBI Lab Report	8/30/73
25. Report of Wiretap Installation	12/1/72
26. Report of Pen Register Installation	5/23/73
27. Toll Call Records	11/16/72

In addition to the above disclosure, Mr. Coffey represented disclosure would be made as follows:

1. The grand jury minutes relating to his client will be sent to each attorney.
2. Completed telephone transcripts and agents' logs.
3. Arrangements will be made for the viewing of physical evidence at a mutually convenient time.
4. The applications of AUSA for order to compel voice exemplars and Judge Clarie's order thereto.

In addition, Mr. Coffey represented the following:

1. There are no voiceprints.
2. No informant-witness to alleged transactions.
3. No other electronic surveillance other than that disclosed above.
4. No undercover agents were involved in the investigation.
5. There is no handwriting analysis by the government.

A concern was expressed by all parties that the present motion scheduling would be impossible to adhere to since total discovery was not obtained on July 3, 1974 coupled with Judge Zampano's unavailability during July. It was agreed by all present that this difficulty in scheduling be made part of this return and the agreement of all parties, subject to the approval of Judge Zampano, that the motion scheduled not commence until discovery is completed.

Clerk, United States District Court
 July 10, 1974
 Page 3.

It is requested that this letter memorandum be filed with the case file. A copy has been sent to all parties.

Thank you for your assistance in this matter.

Very truly yours,

Thomas D. Clifford
 Federal Public Defender

TDC/njk

cc: Paul Coffey, Esq., AUSA
 Anthony Appicella, Esq.
 Roger Frechette, Esq.
 Carter LaPrade, Esq.
 Anthony LaSala, Esq.
 Richard Gruskin, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X
THE UNITED STATES OF AMERICA :
VS. : Criminal Action
Amendola : No. N74-48
-----X

Before the Hon. Robert C. Zampano
United States District Judge
New Haven, Connecticut

September 14, 1976

For The Government:

H. James Pickenstein, Esq.
Assistant United States Attorney
New Haven, Connecticut

For The Defendant:

Roger Frechette, Esq.
215 Church Street
New Haven, Connecticut

This is to certify that the
within 3 pages is a true and
accurate transcript

Official Reporter

[2]

THE COURT: U.S. versus Amendola.

MR. PICKERSTEIN: Government ready.

MR. FRECHETTE: Ready.

THE COURT: Time?

MR. FRECHETTE: I suppose the same as before.

* * *

THE COURT: I am going to pick a jury in U.S. versus Torello, pick a jury in U.S. versus O'Neill and pick a jury in U.S. versus Chapman.

The lineup will be as follows:

Torello will go forward tomorrow morning and we will assume it will go through the week. That will be followed by U.S. versus O'Neill on Tuesday, to be followed by U.S. versus Chapman at the conclusion of the O'Neill case.

Now, in the meantime, Mr. Martner and Mr. Bowman certainly should be able to have the lineup that they requested; notify me when they are ready to present their motion to suppress, if any, and I can handle the preliminary matters, and if they are resolved against the defendant we can go forward, having picked the jury.

Torello will go to trial tomorrow morning but we will pick a jury this morning; O'Neill will go to trial next Tuesday, but we will pick a jury this morning;

[3]

Chapman will go to trial after O'Neill, and after I handle the motion to suppress, but we will pick a jury this morning. That will be followed by U.S. versus Amendola, but I will not pick a jury this morning. I think it would be too much to pick four juries.

MR. FRECHETTE: May I have your Honor's permission to represent to the State that you are holding me?

THE COURT: I am not holding you.

MR. FRECHETTE: If I could start, is that o.k.?

THE COURT: If you have business in State Court, go ahead and start disposing of it. We will give you some warning, because I am going to set Amendola down with Maremma and Apuzzo, and that won't be done for a couple of weeks. So I will be in touch with counsel and we will work it out.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
V. : CRIM. NO. N-74-48
FRANK AMENDOLA :

MOTION TO DISMISS

The defendant Frank Amendola respectfully moves this Honorable Court dismiss the indictment against him pursuant to Title 18, Section 3161e, of the United States Code.

On August 4th, 1976, the jury reported it was hopelessly deadlocked at the trial of this defendant, and, on that day, the Court, Honorable Robert C. Zampano, J., declared a mistrial.

More than sixty days have passed and the government has not commenced a trial against this defendant.

This defendant filed no motions, nor in any way obstructed the government in its efforts to retry him, nor are any days chargeable to him which might extend the aforesaid period of time.

The statute is mandatory in its application.

Wherefore, the defendant moves the Court dismiss the indictment against him.

THE DEFENDANT, AMENDOLA

BY

Roger J. Frechette
His Attorney
215 Church Street
New Haven, Connecticut 06510

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----	X	
	:	
UNITED STATES OF AMERICA	:	
	:	
- versus -	:	Criminal Action
	:	
FRANK AMENDOLA, a/k/a "Alfie."	:	No. 74-48
	:	
-----	X	

United States Court House
New Haven, Connecticut
October 19th, 1976

B e f o r e:

Hon. ROBERT C. ZAMPANO, U.S.D.J.

A p p e a r a n c e s:

For the Government:

PETER CASEY, Special Attorney
450 Main Street
Hartford, Connecticut

For the Defendant:

ROGER J. FRECHETTE, Esq.
215 Church Street
New Haven, Connecticut

[2]

THE COURT: I will take the motion in Amendola. In the case of the United States versus Amendola, N-74-48. There is a motion, I believe, to dismiss it.

MR. FRECHETTE: Yes, your Honor.

THE COURT: Very well.

MR. FRECHETTE: Your Honor, a couple of moments ago I handed Your Honor's clerk and counsel a two-page brief in support of my motion.

THE COURT: Very well.

MR. FRECHETTE: I want to ask, if I might, respectfully, do this? That your Honor --

THE COURT: Yes.

MR. FRECHETTE: -- recollect on September 14th of this year, of which the calendar had Amendola down on page 3 of that jury assignment list. I went over to see Mr. Gale, I think last Thursday, to get a transcript, I understand his Dad passed away, and I don't have it. If there is any factual question, I would like to represent as an officer of the court that I was here at that date with my client. That, in fact, the case was marked ready by me with my client in court. That I think it was Mike Hartmere marked it ready for the government, although I can't be sure it was he that made that statement, and the first case on that list did not go forward. It was a change of plea. The second case on the list was the third case

[3]

marked ready. The second case was the first case marked ready, which went to trial.

THE COURT: What trial was that?

MR. FRECHETTE: United States versus Torello.

THE COURT: Yes.

MR. FRECHETTE: Alan Silver tried that.

THE COURT: Yes. Right.

MR. FRECHETTE: I don't know if Mr. Bowman tried Chapman.

THE COURT: What is the next one?

MR. FRECHETTE: The next case that went forward was on page 4 of the assignment list, it was U. S. versus O'Neill. I do know from my own knowledge that Tom Malex tried that.

THE COURT: That's correct.

MR. FRECHETTE: So that case was after mine on the assignment list. I just want to get that factual situation before your Honor.

THE COURT: Yes.

MR. FRECHETTE: The third case marked ready was U. S. versus Chapman, with Andy Bowman. I don't know if that went forward. And then our case was marked 4th.

Now, having that factual situation in mind, it's our claim that 3161(e) is mandatory in its provision, and I went

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through what I went through just to show -- and if there's any

problem with it, I'll get the transcript -- that the defendant filed no motions, asked for no continuances and in no way made any representations that he could do anything but go forward.

Your Honor may also recall I asked your Honor if you were holding me so that I would not get started in the state court on some material. And as to the law on this, as I see it, and I'm frank to tell you I can find no case, but I guess what I am relying on is the first sentence of 3161(e). To me, it's mandatory. I can see no statutory authorization for any extension of the first sentence of 3161(e).

There is in the statute a savings clause for a retrial after appeal to 180 days. I would draw to your Honor's attention as a matter of grammar there are only two sentences in 3161(e), and the savings clause is in the second sentence; it's not in the first sentence. I might also point out that is unlike the plan.

Now, I am frank to say that my reading of 3162, which is the sanctions section of the Speedy Trial Act, makes no reference at all, and that's one of my claims of law, that 3162 has nothing to do with this situation whatever, it only applies to (b) and (c) of 3161, and, therefore, by the basic rule of statutory construction, if a statute is to mean anything and to have any meaning when it says "shall be put to trial

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within 60 days," that's what it means. And I don't see how

you can, in -- and I use the "you" in the general term, not your Honor -- I don't see how anyone could state, well, it's implied in something else. Because it -- respectfully -- just is not.

Further, if we get to something that the -- the only excuse that I could see would be if there was something under Subsection (h) of 3161 which would in some way save the 60-day provision for the government, and I respectfully represent, your Honor that I can find nothing in there that allows any extension whatsoever. And particularly when nothing was done prior to the expiration of the 60-day provision, having in mind Amendola did nothing to delay the retrial at all.

Now, I would further draw to your Honor's attention that the effective date of the plan is July 1st of 1976. My claim is that 3162 sanctions do not apply, so, therefore, the sanctions under the plan certainly can't enlarge to the defendant's detriment and take away any rights that he might have under the Speedy Trial Act.

So it seemed to me clear on the statute that the motion to dismiss ought to be granted and that Mr. Amendola should not have to go to trial again. I tried to cover all of that in my brief. If your Honor has any questions, I'd like to try to answer them.

THE COURT: Well, let me hear Mr. Casey first.

[6]

MR. FRECHETTE: Yes, your Honor.

MR. CASEY: Your Honor, quite frankly, I was not prepared to argue this this morning. I spoke with Miss Peck Friday and was told that the Court would not hear this motion today, but I am about half-way through a written memorandum. But I think I am able to give the Court today my thoughts on this.

THE COURT: All right.

MR. CASEY: Although I may not have all the citations down as I do not have any notes with me.

Mr. Frechette is correct, your Honor, in that the statute 3161(e) and the district plan do call for retrial within 60 days. However, there is no sanction in either the district plan or in the federal 1961 for that situation.

Now, we have a case here which was tried. A lengthy trial. The government indicated it's readiness for trial within, I believe, three days of the end of that trial. The government, again, through -- I believe it was Mr. Pickerstein in my -- in my behalf -- indicated its readiness on September 14th. At that time the Court's docket was very crowded. Two cases did go forward following that calendar call, and I am not sure which of these cases were first to which, but one of the cases, the indictment had been -- come down, your Honor, in December of 1975; in the other case I believe the indictment had come down in March of '76.

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So here we have two cases, neither of which had had any

trial, and I think the Court was correct in taking those cases prior to a case which had already gone through one trial.

THE COURT: When was the Amendola trial completed? By that I mean disposed of by a declaration of a mistrial. Do you recall the date?

MR. CASEY: I believe, your Honor, it was August the 4th.

THE COURT: And I rescheduled it for trial on September what? Fourteenth?

MR. CASEY: It was placed on the calendar. I don't know when your Honor placed it on the calendar, but it was on the calendar for September 14th, which was within the 60-day period. the 60-day period did not expire -- counting every day, which I guess you have to, including weekends and holidays -- did not expire until October the 3rd. So within the 60-day period the government had indicated its readiness twice. The Court obviously had a crowded docket with cases which had not ever gone to trial over a period of some eight or more months and the Amendola case.

Now, in fairness to Mr. Frechette and to the Court I must state that there is a case on this area. It's a case that I happened to come across yesterday. It's a brand new case out of the Second Circuit. I'm sorry, I do not recall the name of it, but I will call Miss Peck this afternoon to give her the name.

[8]

And it is a case in which the Second Circuit did order the dismissal of an indictment for failure to retry within a certain

period. But it is an egregious example of failure to bring a defendant to trial -- if my memory serves me, it's something like 27 months -- and nothing had been done under the old Speedy Trial Act. And interestingly enough, while the savings clause that Mr. Frechette refers to, the 180-day savings clause, while that does seemingly refer only to retrials which are caused by collateral attack or orders by the Court of Appeals, the Second Circuit -- in my reading of the case -- their language indicated that that 180-day savings clause could also apply to the first section of 3161(e) for good cause.

I know the Court will have to take a look at that case, but I think that if there is good cause, there is good cause here. The government certainly has not tried to destroy the trial -- to try and prejudice the defendant or for any ulterior motive. The Court has had a crowded docket. Society, as well as the defendant, has rights. I just can't conceive that either the federal law, 18 United States Code 3161(e) or the new district plan was meant and envisioned to cause the Court to dismiss an indictment in a situation such as this where there obviously has been no prejudice. If there has been a lapse, it has been a short lapse. The Court had scheduled -- calendered the case prior to the end of the 60 days. The Court now has a

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definite date for going forward. I think the defendant has been protected and I think that, as well, society should be.

THE COURT: I will reserve on it.

MR. FRECHETTE: May I have your Honor's permission to answer?

THE COURT: Certainly. By all means.

MR. FRECHETTE: Thank you. Firstly, as to the sanctions, which I tried to bring up, if this subsection (e) is meaningless because of no sanctions, then you get into an absurd rule of statutory construction that Congress has put something in that it meant to have no effect whatsoever. And of course the general rule is that it's always -- the statute is always construed to save it.

I would draw your Honor's attention to 3161(h)(8)(c) in which congestion of the docket is no excuse.

THE COURT: 31 what?

MR. FRECHETTE: I'm sorry, your Honor. Title 18, 3161 subsection (h)(8)(c) -- in which it specifically refers to trial court congestion. And I am well aware that your Honor is absolutely loaded with business, but the statute does not put that in for any kind of an excuse.

I have one other point, your Honor, if I might?

THE COURT: All right.

MR. FRECHETTE: I don't want to burden you with --

[10]

Mr. Casey feels because it was put on the trial list for September 14th of 1976, that's of moment, and I submit it is not.

Because it says "trial." And under the plan 5(a) and (b), for sure, is my citation, I think it's 6(b), but I'm not sure of that, a trial in a jury case shall be deemed to commence at the beginning of the voir dire. So the mere fact it's assigned, I think, is of no moment.

THE COURT: All right. I will take it under advisement. We will still pick a jury tomorrow morning, though, I will get your brief, I suppose, when, Mr. --

MR. CASEY: I'm about half-way through it now.

THE COURT: All right. I will reserve decision on the motion to dismiss and we will proceed with selecting a jury tomorrow.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

-----X
UNITED STATES OF AMERICA :
VERSUS : Criminal No. N 74-48
AMENDOLA :
-----X

New Haven, Connecticut
October 20, 1976

B E F O R E :

HON. ROBERT C. ZAMPANO, USDJ

A P P E A R A N C E S :

FOR THE GOVERNMENT:

PETER CASEY, ESQUIRE
Assistant United States Attorney
Hartford, Connecticut

FOR THE DEFENDANT:

ROGER FRECHETTE, ESQUIRE
215 Church Street
New Haven, Connecticut

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THE COURT: Now we come to U.S. versus Amendola, N 74-48. Is there anything further on the Motion to Dismiss?

MR. CASEY: I wanted to point out for the record, I worked quite late last night and I have prepared a response which I hope is being typed today so it should be to Mr. Frechette and to the Court within the next couple of days.

THE COURT: Very well.

MR. FRECHETTE: In support of my Motion to Dismiss, your Honor, may I respectfully draw your Honor's attention to the Diddier case at page 84.

If I may quote it briefly to highlight that, in which this October 13th, 1976 case states, "Further delay was also prohibited by the promulgation of the revised Southern District plan for the prompt disposition of criminal cases which became effective September 29th, 1975."

I would draw your Honor's attention that the Second Circuit has, as I read that, put on us notice that our plan, which was effective July 1st, 1976, would control this case, and further in response to your Honor's comment that the prior 90-day rule would be in effect, may I draw to your Honor's attention the last sentence of paragraph 2 of the first page of the

[3]

plan which states, "While we are adopting the 1979 time limits effective July 1st, 1976, none of the sanction encompassed in

18 USC Section 3162 will become effective until July 1st, 1979, the deadline mandated by Congress."

THE COURT: How does that differ from what I said?

MR. FRECHETTE: There is no sanction, respectfully. I put this in my brief yesterday in 3162, that applies in any way to E. It's silent. Sanction in 3162 has nothing to do with the case in question. They only apply to A and B.

THE COURT: The administrative office of the United States has issued a bulletin saying that it does apply, the sanctions do apply to E section of the Act.

MR. FRECHETTE: Then it's my claim that -- and I don't want to necessarily argue this with your Honor -- I want to make the claim that if Diddier doesn't say that plan is effective, that's all I can say.

THE COURT: Very well.

MR. CASEY: May I make one comment. Of course, I do have the brief coming in so I will be very short. I just wanted to comment one point on the Diddier case. That is that not only in that case was the delay that was occasioned 28 months but also the Court found, and I believe it's referenced on the

[4]

last page of the opinion, that much of the delay was attributable to a deliberate attempted effort on the part of the Government to gain a tactical advantage.

This was one of the reasons why the Court dealt harshly in

D'Idier and I don't think that situation exists in this case.

MR. FRECHETTE: Further the Diddier --

THE COURT: We can go on and on and on with this. The Court is satisfied. I may put more comments on the record later but as of right now the Court is satisfied that the Motion to Dismiss must be denied. First because it seems crystal clear in my mind that it's the 90-day rule that controls and that our 60-day rule does not come into effect or have sanctions until later on in 1979 but even aside from that it seems to me that Diddier and the principle enunciated in there, in that case, and its reliance on such cases as Romer, Drummond clearly support the denial of the Motion to Dismiss in this case. This case had its mistrial declared official sometime this summer. I sent it down for September 14th. At that time I went through the entire list of cases set down. I set this one down fourth. I could have very easily that day declared the Amendola case on trial and just continued it until today but I didn't do it out of my -- if my recollection is

[5]

correct, Mr. Frechette said he had some state business--

MR. FRECHETTE: No, your Honor.

THE COURT: He wanted to know if I would hold him and I said I wouldn't do that.

MR. FRECHETTE: It's not correct.

THE COURT: It makes no difference.

MR. FRECHETTE: I didn't say that.

THE COURT: What we will do from now on, particularly with Mr. Frechette's cases, is just put them on trial and avoid this type of problem when a week or two goes by because of other business the Court has. I'm sure there are other reasons in Mr. Casey's brief that will support the denial of the Motion to Dismiss.

For all those reasons, the Motion to Dismiss is denied. We will proceed to select a jury in the Amendola case at this time.

MR. FRECHETTE: I want to file a Motion to Dismiss on double jeopardy.

THE COURT: Motion denied.

MR. FRECHETTE: May I have a moment to hand a copy to Mr. Casey?

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
VS.	:	CRIM. NO. H-74-48
	:	
FRANK AMENDOLA	:	

MOTION TO DISMISS
ON GROUNDS OF DOUBLE JEOPARDY

The defendant Amendola hereby moves this Court dismiss the indictment against him on the grounds that once before he was put in jeopardy as his first trial for the identical offenses ended in a deadlocked jury causing a mistrial to be granted on August 4, 1976; the defendant was not retried within sixty days as is required by Title 18, Section 3161(e), and his motion to dismiss the indictment against him was denied on October 20, 1976. To now try him would place him in jeopardy a second time in violation of his Fifth Amendment rights.

THE DEFENDANT, AMENDOLA

BY

Roger J. Frechette
His Attorney
215 Church Street
New Haven, Conn. 06510

C E R T I F I C A T I O N

I hereby certify that a copy of the foregoing Motion to Dismiss on Grounds of Double Jeopardy was mailed, postage prepaid, to Paul Coffey, Esq., Assistant U. S. Attorney, Federal Building, Hartford, Connecticut, and other counsel of record on October 20, 1976.

Roger J. Frechette

Connelly - cross

[408]

...Q. Talking about pen registers, I think your testimony was -- and I may be wrong in this -- but I thought you testified that an application for a wiretap was obtained by Judge Murphy and it was installed on the telephone of Valeriano; is that so?

A. That is correct.

Q. And then a pen register was installed on that same phone? And I am talking about January 17th through January 27th of 1973.

A. That is correct, Mr. Frechette.

Q. Did you tell Agent Hendricks to install the pen register on that telephone?

A. Yes, I believe I did.

Q. And it was as a result of that pen register installation that you discovered the telephone number 248-2088; isn't it?

A. That is correct.

Q. And it is that pen register that led you to the Amendola house; isn't it?

A. That is correct...

Connelly - direct

[225]

...MR. FRECHETTE: I just want to get into one other thing, because I do not want to push the jury in and out.

Ray, you and I also, I guess, agree, but for the pen register

that was installed under the tap of January 15th of 1973, you would not have gotten to Amendola?

MR. CASEY: I object, Your Honor.

THE COURT: What does that have to do with these tapes? Is it something you feel is not established in this record?

MR. FRECHETTE: That is the reason...

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...THE COURT: I will give you some leeway.

MR. CASEY: Your Honor, it is calling for a legal conclusion.

THE COURT: He is the case agent. He may answer that yes or no. The chips have to fall where they may.

THE WITNESS: It is actually a yes or no opinion. I couldn't answer either way, Mr. Frechette.

MR. FRECHETTE: Do you recall when I asked you this during the last trial and you said yes?

THE WITNESS: We had information to the effect --

MR. FRECHETTE: No --

THE WITNESS: I think --

MR. FRECHETTE: He can answer that yes or no, if it please the Court. My question to him was:

When I asked you this during the last trial, didn't you answer yes?

THE WITNESS: I don't recall.

THE COURT: If he can remember.

MR. FRECHETTE: You do not recall?

THE WITNESS: I don't recall...

Connelly - cross

[414]

... Q. You also know, do you not, that on the very same day there was a search and seizure warrant issued for the Valeriano home?

A. Yes, I do.

Q. You also know, do you not, that nothing --

THE COURT: Read the question.

(The question referred to was read.)

MR. FRECHETTE: Thank you, your Honor...

[415]

... BY MR. FRECHETTE:

Q. I meant for the Amendola home.

A. Yes, sir, that is correct.

Q. And there is no question, is there, that the result of that search and seizure turned up nothing in this case?

A. Nothing of a gambling nature.

Q. At all?

A. That is correct.

Q. Nothing of a criminal nature at all?

A. That is correct.

Q. No question about it?

A. No question.

Q. And no one ever told you that it did turn up anything of a criminal nature; did they?

MR. CASEY: Objection, your Honor, to what someone else might have told him.

MR. FRECHETTE: I am trying to get into what went on yesterday with Mr. Paucci.

THE COURT: He is in charge of the case. You may proceed. Overruled.

Q. Did they?

A. No; that is correct...

Connolly - direct

[224]

...MR. FRECHETTE: You and I can agree, as we did before, that you have no more expertise in the identification of voices than the general public at large; isn't that so?

THE WITNESS: That is correct.

MR. FRECHETTE: So what you are telling us is that you, just as anyone, general public at large, or me, for example, have passed an opinion based upon listening to one set of tapes and comparing them to another set of tapes; is that so?

THE WITNESS: That is correct.

MR. FRECHETTE: You said you listened to these, I think, five to ten times. Can you tell us when? And I am just referring -- I am not so sure I even -- excuse my back for a moment, your Honor -- I do not even know if I have -- I guess they were three specific calls, one on January 17th -- how many times, for example, did you listen to that tape?

THE WITNESS: To that particular call?

MR. FRECHETTE: Yes.

THE WITNESS: I would judge maybe five -- five times, approximately.

MR. FRECHETTE: Can you tell us when? ...

Connelly - cross

[419]

...Q. Agent Connelly, you have no special talent for voice comparison or identification; do you?

A. That is correct.

Q. You have the same expertise as I or a member of the general public would have, and that is all, isn't it?

A. I would judge that to be correct, Mr. Casey -- Frechette.

Q. You have had no schooling on the identification and comparison of voices?

A. No, sir.

Q. And you have had no schooling in the electronical comparison of voices; have you?

A. No, sir...

Rauci - direct

[352]

...MR. FRECHETTE: Captain Rauci, you do not make a claim of being a voice expert; do you?

THE WITNESS: No, sir, I do not.

MR. FRECHETTE: And you do not make any claim of being an electronic expert; do you?

THE WITNESS: No, sir, I do not.

MR. FRECHETTE: And you have had no special training of any nature in the identification of voices; have you?

THE WITNESS: No, sir.

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MR. FRECHETTE: Is it a fair statement that you are probably as equipped as I or anyone else to compare voices and opine as to whether or not they are one and the same?

THE WITNESS: I would say so, sir...

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...MR. FRECHETTE: What I am trying to ask you is did you hear these tapes at the Hamden P. D. or at the FBI.

THE WITNESS: I heard the dates that were dated October 22nd at the Hamden Police Department.

MR. FRECHETTE: How about the other one?

THE WITNESS: It was at the FBI headquarters...

Holmes - direct

[442]

...Q. Directing your attention to these items which have been marked Government Exhibits 8 through 18, have you had an opportunity to examine these items?

A. Yes, sir, I have.

Q. Personally examine them?

A. Yes, sir.

Q. And --

MR. FRECHETTE: Your Honor, excuse me. May I just voir dire him as to when?

THE COURT: Yes.

MR. CASEY: Maybe if I just ask the question:

BY MR. CASEY:

Q. When did you examine those items?

A. Within the last week...

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...MR. FRECHETTE: Your Honor, I will just make this one comment and sit down. May I object on the grounds that I had before, plus the 3161(e) objection?

THE COURT: Yes.

MR. FRECHETTE: Thank you very much.

THE COURT: All objections are overruled.

MR. FRECHETTE: Thank you...

Holmes - cross

[485]

...Q. Oh, yes. When is the first time you got involved in this case?

A. Approximately a week and a half ago.

Q. Were you here for the first day of trial, which was last Thursday, as I recall it?

A. No, sir, I was not.

Q. Were you here Friday?

A. Yes, sir.

Q. Was that the first time you got involved in this case?

A. No, sir.

Q. When was the first time?

A. Wednesday, I believe it was, of last week.

Q. You came up from Washington to New Haven?

A. Yes, sir.

Q. You had not seen the case before that?

A. No, sir...

O'Connor - direct

[11]

...MR. FRECHETTE: The grounds of my objection are, your Honor, that this is, I recall, a telephone attributed to Amendola. I have a brief with me on something that your Honor, quite frankly, has already ruled on, that it became apparent that the only way they got to Amendola by use of the Pen Register and the lack of an inventory.

All I want to do now is raise that at the earliest possible time, and so I would object to it. I can bring that brief up if Your Honor would want me to. It may be premature.

THE COURT: Did you submit this brief at the last trial?

MR. FRECHETTE: I did, your Honor.

THE COURT: Same brief?

MR. FRECHETTE: I put it in in two briefs. I tried to combine it together, but basically it is the same thing.

THE COURT: I will be happy to take the brief and study it. Whose phone was this?

MR. CASEY: Amendola's...

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)	
)	
VS.)	CRIMINAL NO. N-74-48
)	
DANIEL VALERIANO, CHARLES FURMAN,)	
CATHERINE BROWN, a/k/a Catherine)	
Jones, CLIFTON ADAMS, ELLSWORTH)	
BELL, FRANK KINSLER, FRANK AMENDOLA,)	
a/k/a "Alfie")	

NOTICE TO SUPPRESS EVIDENCE

Defendant Amendola respectfully moves the court suppress any testimony against Amendola because the same stemmed from a Pen Register (Dial Recorder) and no inventory was ever served on the defendant Amendola.

Agent Connolly has testified under oath that but for the Pen Register they never would have connected Amendola to this case.

Although the claim of failure to serve a timely inventory was decided by Your Honor on February 18, 1976, said Special Agent Connolly testified before Honorable Jon O. Newman, J., on April 25, 1973 (see transcript dated 4/25/73 requesting an extension of service of inventory), and testified, at Page 13, "There is speculation that it could be Mr. Amendola, but we don't know."

It developed at trial that a pen register was placed on Valeriano's telephone between January 20th and January 27th of 1973. A review of the transcript makes clear this pen register information was not made known to Judge Newman, nor was it made

known to Your Honor either before the ruling at trial, or in Your Honor's Memorandum of Decision.

Defendant Frank Amendola moves the suppress any evidence concerning his involvement leading out of the pen register (and this will be all the evidence in the case, inasmuch as Special Agent Connolly has already testified that but for the pen register they could not connect up Amendola) and further moves to strike any testimony as it applied to Frank Amendola on the ground that the installation of the pen register in January of 1973 and the failure of the government to serve any inventory on him (let alone a timely inventory) violates the essential safeguard test of U.S. v. Chun, 386 F. Supp. 91.

Granted, Frank Amendola is an unnamed party to the application and order in January of 1973, but facts brought out subsequently, to wit, at the trial of this case by Special Agent Hendricks, make him a member of that class of persons who must be served with a timely inventory as indicated by Chun, supra.

It is respectfully submitted that one cannot attach a pen register to a telephone without satisfying Fourth Amendment and First Amendment guarantees which means an application and order based upon probable cause which would satisfy those requirements. That is the fair import of U. S. v. Finn, 502 F.2d. 938 and U.S. v. Giordano, 416 U.S. 505, and even the dissent at 549. Further, the test of pen register results cannot be used under 47 USCA 605 unless there is a subpoena to require it. Finn, supra.

It must be understood that as far as the majority in Giordano is concerned, the pen register was, by implication, treated as an interception because of the inaction in the majority opinion upon the government's claim.

If one takes the position which every court has taken that some kind of Fourth Amendment safeguard is necessary, and further that the only justification for the use of the pen register in the instant case is the order of January 15, 1973, signed by Judge Murphy, then one must conclude, as Your Honor has, that the lesser within the greater rule applies. If that be true, then one must conclude that an inventory must be served as required by Title 18, Section 2518. No such inventory of any kind of the results of the January pen register has been served on anyone. It follows, then, that the results of the pen register are not admissible at trial, the information leading from it must be suppressed, the testimony resulting from it must be stricken, and, as concerns Frank Amendola, the case dismissed because Special Agent Connolly has already told Your Honor that but for the pen register, they would not have gotten to Frank Amendola.

The Court's attention is drawn to U. S. v. Lanza, 341 F. Supp. 405 (1972) which states "The holding here is that the pen register, when used in conjunction with a court ordered wiretap, is an interception of wire communication and..." Therefore, in that analogous situation it logically would require that the inventory be served or the evidence gained therefrom is not

admissible. A reading of Korman v. U.S. 486 F.2d. 926, 932 indicates that the pen register is treated as a tap and therefore an inventory is needed.

Another significant issue in this case concerning the pen register is the impact of Section 2518, subsections 5 and 8. There were no facts given to the judge concerning the use of the pen register which would allow him, in order to have the use of the pen register under judicial supervision, to meaningfully grant the extension or deny it. The essential safeguards of the rights of the individuals to be free from search were not satisfied because of the government's failure to disclose the use of the pen register to them.

Your Honor is further requested to note Page 57 of the transcript in the first case in which the government concedes the installation of the pen register under court authority. It has none for the January installation. If Your Honor takes the position that the pen register is lesser included in a tap authority, then and in that event, an inventory must be filed on both pen register installations.

THE DEFENDANT FRANK AMENDOLA

BY

Roger J. Frechette
His Attorney

Proceedings

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...THE COURT: So, if I understand, Mr. Frechette's position is that, consistent with his legal claims on the Pen Register, he would object to any and all documents concerning those Pen Registers coming in before the jury. On the other hand, he has no objection to a summary document in order to avoid the massive presentation of the Pen Register records...

Connelly - direct

[203]

...THE COURT: Okay. But that is very important, because I am well aware that the -- your brief is designed to affect almost every single thing against your client, because it deals with the basic underlying lead to your client, the pen register...

Puckett - direct

[168]

...Q. And did Mr. Amendola identify himself to you?

A. Yes.

Q. As Frank Amendola?

A. Right.

Q. Did he also give you his address?

A. Yes, he did.

Q. What was it?

MR. FRECHETTE: Your Honor, may --

A. 719 Still Hill Road, Hamden, Connecticut.

MR. FRECHETTE: I would like to object. I am going to object for the reasons as stated before, and I would ask that your Honor note a Fifth Amendment objection as well.

THE COURT: Yes.

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MR. FRECHETTE: Thank you.

THE COURT: Overruled.

MR. FRECHETTE: Thank you.

BY MR. CASEY:

Q. Agent Puckett, directing your attention to all of these Government exhibits for identification, after you took the voice exemplar, the voice exemplar was reduced to tape, what happened to them?

A. I turned them over to Agent Connolly, who was the case agent and had the responsibility for the investigation.

MR. CASEY: We would move for the admission of the voice exemplars at this time, Government Exhibits for identification 21 through 26, your Honor.

THE COURT: Any objection?

MR. FRECHETTE: Yes. Objection would be as previously stated, and for 26 this Fifth Amendment violation as well.

THE COURT: On the grounds advanced, the objections are overruled.

MR. FRECHETTE: Thank you...

Puckett

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...Would your Honor entertain a further motion based upon the Fifth Amendment, please.

THE COURT: Yes.

MR. FRECHETTE: Thank you very much.

THE COURT: Yes, and overruled.

In other words, the voice exemplars on Exhibit 26 set forth the voice of the person sitting next to Mr. Frechette, the defendant in this case?

THE WITNESS: That is correct...

Connelly

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...MR. CASEY: Your Honor, at this point the Government would like to take the opportunity to reply the voice exemplar of Frank Amendola.

MR. FRECHETTE: I would have the same comments I had before for the objection, your Honor, and your Honor already ruled on it.

THE COURT: Any other grounds?

MR. FRECHETTE: No.

THE COURT: Very well, Are you all set up for that?...

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
VS.	:	CRIMINAL NO. N-74-48
	:	
FRANK ANENDOLA	:	

BRIEF RE: VOICE IDENTIFICATION

United States v. Chiarizio, F.2d. refers to four cases to substantiate the allowance of an agent to testify as to the identification of a voice.

In Davis v. U. S., 279 F.2d. 576, 579, the undercover agent had never previously talked to Davis, but on the conversation in question he talked to Davis who made a telephonic announcement of himself, and that person who made a telephonic announcement of himself requested a co-conspirator, Johnson, to deliver a package to a man whom he would meet at a designated time and place and collect a certain sum of money. Both Johnson and the agent testified that the delivery and collection were accomplished and the agent testified that it was in accordance with the plans he had made with Davis during that particular telephone conversation. Further, there was substantiation in that when the agent spoke to Davis a second time, another agent testified that he positively identified Davis as the speaker. Therefore, what we have in the Davis case is not an agent comparing a tape with a tape, but an agent identifying his own voice and that of Davis and a multitude of corroborating evidence.

In Palos v. U. S., 416 F.2d. 438, the Fifth Circuit has held

that circumstantial evidence can be used to establish the identity of the person who was called, and it is most significant that the person who identified the voice was the same agent who monitored the telephone call, and when the undercover man dialed a number registered to the appellant (not the appellant's wife) and the phone was answered, the undercover man requested "Palitos" which was a name by which Palos was known, and as a matter of fact, is the Spanish name for little Palos, and he, the defendant, responded, "Yes, this is he." Once again, this is not the instance of an agent without expertise comparing records.

In U. S. v. Rizzo, 492 F.2d. 443, 448 (a Second Circuit case) we have the situation, and once again, the factual basis for the identification is entirely different than in our case. Three detectives of the New York City Police Department identified the tape recorded voice as DeLorenzo's. We do not know when or how they made that identification, as it does not state that they came into court and listened to an exemplar, and on the basis of the exemplar, identified other tapes. This case hinges on U. S. v. Bonnano, 487 F.2d. 654, 655, 659.

Of significance in Bonnano at Page 659, is the Second Circuit Court's ruling that the objection to the admissibility of the evidence was not made in the district court. It has been made in this case. We have objected that Agent Connolly has not stated that he listened to the call at the time it was made. Therefore, one of the tests of Bonnano has not been met. Further, there is no corroboration between "in view of the identity between the

scenario arranged on the telephone and that subsequently enacted, the case would come within the principal of Vanriper v. U. S., 13 F.2d. 961. None of the requirements of Bonnano have been met in the instant case.

It is respectfully submitted that upon Agent Connolly's testimony that he could not identify the voice until such time as he had heard the voice exemplar, and further that he had no more expertise in the identification of the voices than the rest of us, then and in that event, he is not testifying as an expert, and he is usurping the function of the jury, by giving his opinion. Therefore, it follows the tapes are not admissible as they do not comply with the case law on admissibility of tapes.

The voice identification should be suppressed.

November 5, 1976.

THE DEFENDANT, FRANK AMENDOLA

BY

Roger J. Frechette
His Attorney

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...MR. FRECHETTE: I would ask your Honor

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next to strike Exhibits 5, 6 and 7 and all of the testimony of O'Connor.

MR. CASEY: Those are the work sheets, your Honor, from Mr. O'Connor, showing the dates that he gave certain information to the FBI.

THE COURT: On what ground do you wish them stricken?

MR. FRECHETTE: That he came over and testified without a subpoena, which I understand violates the statute.

THE COURT: Violates which statute?

MR. FRECHETTE: I cannot remember it, Judge.

THE COURT: But there was a subpoena.

MR. FRECHETTE: No, there was not.

MR. CASEY: I had a subpoena drawn up three days in advance. I simply forgot to bring it up and give it to Mr. O'Connor on that day, and, in fact, the marshal did serve it on him the following day. There was a subpoena in existence for those records, your Honor.

THE COURT: Very well. Motion is denied...

Connelly - cross

[422]

...Q. The other agents that were monitoring at 770 Chapel Street were Richard Ludwig --

A. Yes, he was one of the agents.

Q. -- Dewey Santa Cruz --

A. That is correct.

Q. -- Emmett Michaels --

A. Yes, sir.

Q. -- and Steven Slifka?

A. Yes, sir.

Q. Each and every one of them still employed by the Bureau?

A. Yes, sir, they are.

Q. And each and every one of them still in Connecticut?

A. That is correct...

Connelly - direct

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...MR. FRECHETTE: Mr. Connelly, there is no question that before the exemplar was made you had never talked to Amendola at all; had you?

THE WITNESS: That is correct.

MR. FRECHETTE: No question about that?

THE WITNESS: No question about that.

MR. FRECHETTE: And the exemplar was made on March 8th of 1974?

THE WITNESS: That is correct.

MR. FRECHETTE: And whatever comparisons you may have made had to emanate from a January 17, 1973 to a January 24, 1973 tape; isn't that so?

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THE WITNESS: 27th, January 27th.

MR. FRECHETTE: I meant that. I guess it is from the 17th to the 27th of January of 1973.

THE WITNESS: Yes, that's correct.

MR. FRECHETTE: And you never ever talked to Amendola until such time as you got that voice exemplar sometime in March of 1974, some fourteen months later?

THE WITNESS: Well --

MR. FRECHETTE: Isn't that so?

THE WITNESS: That is correct. That's the first time, the voice exemplars.

MR. FRECHETTE: My claim, your Honor, which I could not foresee when I did the brief, is that, because Pate has put in the exemplar of Amendola, this jury and this jury alone should make that comparison, because this man is not an expert.

I think it is a little different than the one we had before. I am frank to say I did not think that he should have been permitted as a nonexpert to venture an opinion on that, but I think this is entirely different; and, most particularly, as to any identification of Amendola,

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that should be done, if it is going to be done, by the jury...

Raucci - cross

[359]

...Q. You said that the first time you have ever talked to

Frank Amendola was when you executed a search warrant in 1973; is that so?

A. Yes, sir, I believe so.

Q. I think you said you were with a Mr. Slifka from the FBI?

A. That's correct.

Q. And you both went in the house and you searched?

A. Yes, sir.

Q. You were looking for gambling and numbers material; weren't you?

A. Yes, sir, we were.

Q. And you found absolutely nothing, did you?

A. I really don't know exactly what was found with regards to any pertinent information to the investigation.

Q. You found nothing at all to do with numbers; did you?

MR. CASEY: Excuse me. Your Honor, I do not think the witness finished.

MR. FRECHETTE: Excuse me. I apologize.

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A. I did know that Agent Slifka did take items or -- or things from the house that I'm not aware of.

Q. Are you making the claim that when you went in there to execute that search warrant that as a result of it you and Agent Slifka went out of, and found material that is connected with the numbers business?

A. I believe Mr. Slifka's comment to me, Mr. Frechette --

Q. No, I am asking you what you found.

A. I don't recall, Mr. Frechette, what was found, due to the fact that this was an investigation that was being conducted by the Federal Bureau of Investigation. I was there just to assist Mr. Slifka.

Q. You were there, and you were there for two hours?

A. Yes, sir.

Q. And in two hours you went all through the house; didn't you?

A. Yes, sir, we did.

Q. You know what flash paper is; don't you?

A. Yes, sir, I do.

Q. And you know all of the different paraphernalia that is in the numbers business; don't you?

A. Yes, sir, I do.

Q. You found none of it there; did you?

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A. I can honestly answer that question by saying that, as far as flash paper, as far as numbers, to my knowledge, no.

Q. You found nothing, did you, that is in any way connected to the numbers business?

MR. CASEY: Your Honor, I think the witness has indicated what his knowledge is. Mr. Frechette seems to be trying to get someone else's knowledge.

MR. FRECHETTE: No, I am trying to get the witness', who I

feel is not coming out with it.

THE COURT: The objection is overruled. You can answer that.

THE WITNESS: All right.

A. I know that Agent Slifka took items from the house and stated that they would have to be analyzed further, and at that time there he would have a better judge of what direction they were going to go with the investigation.

Q. Did you see anything remotely connected to the numbers business when you executed that search?

A. Not to my knowledge, sir.

Q. Is it your testimony and are you telling this jury that Agent Slifka told you that he found, when he was with you on that search, material that was connected to the numbers

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business?

MR. CASEY: Your Honor, I object. In the first place, it misstates the witness' testimony.

THE COURT: The witness did not say that.

MR. FRECHETTE: I apologize, Your Honor. Let me ask it directly out.

BY MR. FRECHETTE:

Q. Did Agent Slifka tell you that he had found material, when he searched with you, that was in any way connected to the numbers business?

A. I believe he told me he did not.

Q. So, as far as you are concerned, there was absolutely nothing there connected to the numbers business; that is true, isn't it?

A. Yes, sir, it is...

Connelly - cross

[422]

...Q. Matter of fact, you never staked out the Amendola residence in May of 1973, either; did you?

A. No, sir.

Q. So you do not know if Frank Amendola was in that house in May of 1973; do you?

A. No, I do not.

